

VERMONT LABOR RELATIONS BOARD

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| Local 1201, AFSCME |) | |
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| and |) | DOCKET NO. 81-86 |
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| City of Rutland |) | |

FINDINGS OF FACT, OPINION, AND ORDER

On December 29, 1981, Local 1201, AFSCME ("Union") filed a petition with the Vermont Labor Relations Board to include the position of Dispatcher in the Department of Public Works Unit represented by the Union. The City of Rutland ("City") opposed the inclusion of the position in the unit, maintaining that the position was confidential.

A hearing was held June 10, 1982, before Board members Kimberly B. Cheney, Chairman, and William G. Kemsley, Sr. Member James S. Gilson was absent. The Union was represented by Attorney Alan Biederman. City Attorney William Bloomer represented the City. Requested Findings of Fact and Memoranda were filed by the City and Union on June 24 and 28, 1982, respectively.

FINDINGS OF FACT

1. The Union is the certified collective bargaining representative of certain employees of the City of Rutland. The Union represents the following units of employees: a) certain Department of Public Works employees, b) certain Police Department employees, c) certain maintenance employees of the Rutland City Schools.

2. Prior to a Decertification Order of this Board dated February 11, 1982, (Docket No. 81-84, Clerks and Technical Employees, Local 1201, AFSCME and City of Rutland) the Union also represented certain clerical and technical employees of the City of Rutland.

3. Included among the positions in the clerical and technical employees' unit was the position of Dispatcher of the Department of Public Works (DPW).

4. The DPW Dispatcher for the past two years has been Claude Taggart. He works the same hours as other Department employees (7:00 a.m. - 3:30 p.m.) and performs his job in the office of the DPW Assistant Superintendent. The Assistant Superintendent is Donald Foster. The office is located in the City Garage on Spruce Street, Rutland, and is separated from the Garage by a door. The Dispatcher and Assistant Superintendent work in the same room and share a common telephone line to which each has an extension phone. Their desks are about six feet apart and are not separated by a door or a partition.

5. The Assistant Superintendent directs the work of the Streets Department of DPW. He is responsible to the Commissioner of Public Works, Thomas MacAuley, who works in an office at City Hall.

6. Taggart, as Dispatcher, works under the direct supervision of the Assistant Superintendent. His duties include maintaining radio contact with work crews, relaying and receiving messages and complaints, answering the phone, and preparing and maintaining time reports and equipment maintenance reports (i.e. mileage, fuel used, repairs made). Time reports indicate the actual hours worked by employees in a given time period, and are compared with the time sheets submitted by the employees.

7. Disciplinary action taken against DPW employees is done solely by the Commissioner.

8. If Taggart discovers any discrepancy between the time sheets submitted by employees and the time reports, he is expected to bring it to the attention of the Assistant Superintendent for possible disciplinary action.

9. There have been occasions where employees have returned to the City yard prior to the completion of their shift and engaged in non-productive activity. It is Taggart's responsibility to be aware and keep a record of such occurrences and report them to the Assistant Superintendent.

10. No evidence was presented indicating any report by Taggart has ever resulted in disciplinary action being taken against an employee.

11. Taggart has a key to the Assistant Superintendent's file which contains communications from the Commissioner on union-related matters.

12. The Spruce Street Office of the Assistant Superintendent is located approximately a half mile from the Office of the Commissioner of Public Works in City Hall.

13. The Assistant Superintendent generally uses his office for assignment of work and direction of the work force.

14. The Commissioner and Assistant Superintendent do discuss confidential labor relations matters (i.e. disciplinary action, negotiations). Generally, these discussions occur in the Commissioner's Office in City Hall. There are occasions when the Assistant Superintendent and Commissioner will discuss such matters over the phone. If the Assistant Superintendent wants to discuss the matter privately, he will ask Taggart to leave the office. At most, Taggart has been sent out of the office for 2 1/2 to 3 hours a week.

15. The Assistant Superintendent's office is connected to the Garage where bargaining unit employees work. The office door is generally left open and employees may enter the office without knocking and without

being given express permission to enter. However, the Assistant Superintendent does not permit employees to congregate there and expects them to come into the office only if they have business to discuss with him.

16. Whenever Taggart has been absent from work, his temporary replacement has always been an employee represented by the Union. The Assistant Superintendent has discretion whether to select a unit or non-unit employee, but has always selected a unit employee to act as temporary dispatcher.

OPINION

At issue is whether the position of Department of Public Works (DPW) Dispatcher should be included in the DPW bargaining unit represented by the Union. The City opposes the inclusion on the grounds the Dispatcher is a confidential employee, and thereby ineligible to be included in a bargaining unit pursuant to 21 VSA §1722 (12)(D). "Confidential Employee" is defined in 21 VSA §1722(6) as:

An employee whose responsibility or knowledge or access to information relating to collective bargaining, personnel administration, or budgetary matters would make membership in or representation by an employee organization incompatible with his official duties.

It is the City's position that the duties of the Dispatcher give him both knowledge and access to information relating to personnel administration and that these duties would be incompatible with his inclusion in the DPW unit.

In determining whether an employee is "confidential", we "look to the nature of the work performed, lines of authority, and organization

patterns in reaching our decision." Vermont Education Association and Windsor School District, 2 VLRB 295 (1979). In previous cases we have ruled that employees who have access to confidential information as part of their regular duties meet this definition, American Federation of Teachers, Local 3333 and Washington Central Supervisory Union, 1 VLRB 288 (1978); Castleton Education Association and Castleton Board of School Directors, 1 VLRB 374 (1978), United Steelworkers of America, Local 8774, Barre and City of Barre, 5 VLRB 3 (1982); but that employees whose duties require only occasional access to confidential material which the employer could reassign or employees who occasionally substitute for confidential employees do not meet the definition of "confidential" employee. Vermont Education Association and Rutland City School Department, 2 VLRB 108 (1979). Vermont Education Association and Windsor Town School District, supra.

Here, the Dispatcher, Claude Taggart, has knowledge and responsibility relating to personnel administration as part of his regular duties which make his inclusion in the bargaining unit incompatible with his job. Included among Taggart's daily duties are preparing and maintaining time reports which indicate actual hours worked by employees in a given time period. If he discovers any discrepancy between times sheets submitted by employees and the time reports, he is expected to bring it to the attention of his boss, the Assistant Superintendent, for possible disciplinary action. Also, it is Taggart's responsibility to keep track of employees returning to the City Yard prior to the completion of their shift and engaging in non-work activity and report that to the Assistant Superintendent.

These duties require Taggart to investigate and report on the conduct of bargaining unit members. To place his position in the unit with these employees would have a disruptive effect on labor relations due to the potential for conflict of interest that would be created. As we stated in American Federation of Teachers, supra at 293:

Vermont's municipal labor relations statute...adheres to the rationale generally accepted in labor law that an employer should be entitled to rely upon employees who are not subject to divided loyalties and that employees should not be put in a position where they must choose between their obligations to a union and to their employer.

The potential conflict of interest that would result if the Dispatcher was placed in the unit is obvious. If Taggart discovered a unit member not working until the end of his shift or falsifying time reports, his ability to report the employee without antagonizing fellow unit members would be severely tested. He would be forced to tread a narrow path between his loyalties to fellow unit members and his job responsibilities. He would be subject to the distrust of both management and the union; regarded as either a "management spy" or "union spy".

Taggart's work location and the general organization of the work flow in the office reinforce our view his interests and loyalties are more closely aligned with management than with bargaining unit members. He works in the same room as the Assistant Superintendent, a member of management, and there are no bargaining unit members in the office. Although there is no specific evidence concerning why Taggart's access to the Assistant Superintendent's letter file containing communications from the Commissioner is necessary to perform his regular duties, it is apparent that he acts as a conduit of information for the Assistant

Superintendent of DPW and thus access to the letter file may be important to the operation of the office. Also, even though the Assistant Superintendent's phone discussions with the Commissioner on confidential labor relations matters are of insufficient occurrence so that Taggart could be required to leave the room when Mr. Foster carries on discussions with the Commissioner's Office in City Hall, we feel this would place an unfair burden on the employer. Compare Vermont Education Association and Rutland City School Department, supra.

ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED:

The petition of Local 1201, AFSCME, to add the position of Dispatcher, Department of Public Works, now held by Claude Taggart, to the Department of Public Works bargaining unit they represent is DISMISSED since Claude Taggart is a confidential employee under 21 VSA §1722.

Dated this 30th day of July, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.